



Express Mail No. EL 500 578 870 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Carlos D. Fear

Confirmation No.: 8668

Serial No.: 09/772,330

Art Unit: To be assigned

Filed: January 29, 2001

Examiner: To be assigned

For: Blackberry Plant Named
'SONOMA'

Attorney Docket No: 8569-013-999

**PETITION TO WITHDRAW HOLDING OF
ABANDONMENT UNDER 37 C.F.R. § 1.181(a)**

Assistant Commissioner for Patents
BOX DAC
Washington, D.C. 20231

Sir:

Under 37 C.F.R. § 1.181(a), Applicant hereby respectfully petitions to withdraw the holding of abandonment, as set forth in a Notice of Abandonment mailed March 11, 2003, in connection with the above-identified application. Applicant submits herewith the following: 1) Exhibit A: a copy of the return postcard receipt bearing the official May 7, 2001 date stamp of the United States Patent and Trademark Office ("PTO"); 2) Exhibit B: a copy of Express Mail Label No. EL 501 638 858 US stamped May 7, 2001; 3) Exhibit C: a copy of the Response to the Notice to File Missing Parts of a NonProvisional Application filed May 7, 2001; 4) Exhibit D: a copy of the executed Declaration for the above-identified application filed May 7, 2001; 5) Exhibit E: a copy of the Status Request filed March 6, 2002; and 6) Exhibit F: a copy of the return postcard receipt bearing the official March 6, 2002 date stamp of the United States Patent and Trademark Office ("PTO").

The Notice of Abandonment ("Notice") issued by the PTO on March 11, 2003 asserts that Applicant failed to timely or properly respond to the Notice to File Missing Parts (Notice) mailed March 6, 2001. A copy of the Notice is attached hereto.

Applicant respectfully contends that the Notice was issued in error and the holding of abandonment should be withdrawn. On May 7, 2001 Applicant timely submitted a proper Response to the Notice together with an executed Declaration, and return copy of the Notice. In support of this assertion, the Commissioner's attention is directed to: 1) a copy of the return postcard receipt bearing the official May 7, 2001 date stamp of the PTO and indicating Express Mail No: EL 501 638 858 US (Exhibit A); 2) a copy of Express Mail Label No. EL 501 638 858 US, bearing the official date stamp of the United States Postal Service of May 7, 2001, and the "date in" marked as May 7, 2001, evidencing Applicant's timely submission via Express Mail (Exhibit B); and 3) a copy of the above-mentioned executed Response and Declaration (Exhibits C and D respectively). In addition, during the past year, Applicant's representatives have made inquiries on several occasions to the USPTO to determine the status of this application. On March 6, 2002, a Status Request was submitted to which no response was received (Exhibit E). As evidence of submission of the Status Request, a copy of the return postcard receipt bearing the official March 6, 2002 date stamp of the United States Patent and Trademark Office ("PTO") is attached herewith (Exhibit F). On April 1, 2002, a telephone inquiry was made to the United States Patent and Trademark Office (USPTO) and Attorneys for the Applicant were informed that the Application had not yet been assigned to an Examiner. On January 8, 2003 and again on March 4, 2003, Attorneys for the Applicant telephoned the USPTO and spoke with Ms. Doshee Day who informed us the application had gone abandoned and that a Notice of Abandonment would be issued immediately, despite Attorneys for the Applicant transmitting via facsimile on those dates the relevant documents attached herewith that indicate a proper and timely response was filed.

In view of the evidence of timely submission of the Response to the Notice to File Missing Parts of NonProvisional Application, it is submitted that the Notice is in error and should be withdrawn. It is urgently requested that the application be forwarded to the

Examination Center.

Pursuant to 37 C.F.R. § 1.181(f), any such petition not filed within two months of the action complained of, *i.e.* by May 11, 2003 in the instant application, may be dismissed as untimely. Accordingly, this petition is being timely filed. Therefore, pursuant to 37 C.F.R. § 1.181(f) and M.P.E.P. § 711.03(c), no fee is now believed to be due. However, in the event that the PTO should determine that a fee is required please charge the required fee to Pennie & Edmonds LLP Deposit Account No. 16-1150.

Respectfully submitted,

Date: March 21, 2003

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Enclosures